IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2004

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Second Appeal No.1429 of 1993

The District Collector,
Periyar District,
Erode. .. Appellant

Vs.

1. Nallamuthu
2. Mariyayi
3. Palanichami
4. Balasubramaniam
5. Venkatachalam
6. Kuppannan
7. Kaveri
8. Subramani
9. Mohan
10.Govindasamy
11.Thirumalai
12.Pavayi
13.Palaniappan
14.Muthusamy .. Respondents

Second Appeal preferred under Section 100 CPC for the relief as stated therein.

For appellant : Mr.S.Sathyamoorthy,
Government Advocate.

For respondents: Mr.N.Manokaran for
Mr.S.Kunalan

:J U D G M E N T

The above second appeal is directed against the judgment and decree dated 25.1.1991 rendered in A.S.No.198 of 1990 by the Court of Principal District Judge, Erode, thereby reversing the judgment and decree dated 31.1.1990 rendered in O.S.No.792 of 1985 by the Court of Additional District Munsif, Erode.

2. Tracing the history of the above second appeal, it comes

to be known that the respondents herein have filed the suit in O.S.No.792 of 1985 before the court below for permanent injunction restraining the appellant/defendant and his men from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property and for costs on averments such as that the suit property belongs to the plaintiffs absolutely; that one Ramaswami Chettiar, the ancestor of plaintiffs 1 to 5 was granted 5 cents of land on 27.10.1923 by the then District Collector for the purpose of putting up the country Oil Mill called 'Chekku' in that land and for enjoying the same for ever; that land is the southern portion of the suit property; that the grant was made in a pucca deed; that three pattas containing three cents of land each were granted for the same purpose in favour of one Muthusami Chettiar and his two sons Pachiappa Chettiar and Appavu Chettiar separately; that Muthusamy, Pachiappa and Appavu are the ancestors of plaintiffs 6 to 14; that 9 cents of land of these people lie in the north of the suit property; that Pachiappa and Appavu were the sons of Muthusami and that plaintiffs 6 to 14 belong to one family; that the ancestors of the plaintiffs put up the oil mill in the suit land granted to them and enjoyed by them; that they have also put up buildings and are residing there; that thereafter, the plaintiffs have been enjoying the suit property in the similar manner, but on account of a cyclone which hit that area a year back, the plaintiffs' buildings and oil grinders got damaged and became unusable; that taking advantage of this, the enemies of the plaintiffs have instigated the defendant to deprive the plaintiffs of the suit land and to use the same for some other purpose; that the defendant has no right, title or interest in the suit property and even if he has, the plaintiffs can be evicted only under due process of law and not otherwise; that on such and other averments, the plaintiffs would pray to decree the suit as prayed for.

3. The suit was contested by the defendant and he would submit in the written statement that an extent of 4.06.0 hectares in S.No.312 located at Mukasi Hanumanpalli village is notified in the revenue records as natham poramboke; that an extent of 0.14 cents has been granted in favour of one Ramasamy in the year 1923 on certain conditions; that as per the said conditions, the property should be used for putting up 'Chekku' with the help of the bullocks and if the property is not made use of for such activity and if the same is used for some other purpose breaching the conditions, the grant would be cancelled; that the plaintiffs are not running the 'Chekku' business for the past 15 years; that in the fasli year 1383, a re-survey was made in the suit property and the entire extent of the suit property was classified as natham poramboke; that a show cause notice was issued on 15.10.1985 to the effect that the suit property was required for the purpose of constructing a building for noon-meal scheme; that therefore, eviction proceedings were taken to evict the plaintiffs; that the suit is not maintainable since notice under Section 80(1) C.P.C. was not issued. On such averments, the respondent would pray to dismiss the suit with costs.

4. Based on the above pleadings by parties, the trial court would frame the following issues for determination: (i) Whether the suit is not maintainable on account of noncompliance of the provision of law under

Section 80(1) C.P.C?

(ii) Whether the land lying in S.No.312 of Mukasi Hanumanpalli village extending 4.06.0 hectares is classified as natham poramboke?

(iii) Whether an extent of 14 cents of land had been assigned in favour of Ramasamy Chettiar in the year 1923?

(iv) Whether in the cyclone that had occurred some years back, the buildings and the oil making device ('Chekku') were destroyed?

(v) Whether the assignment granted in favour of the plaintiffs become liable to be cancelled on account of breach of conditions?

(vi) Whether the plaintiffs are entitled to the relief as prayed for in the suit?

(vii) What other relief, the parties are entitled to?

5. Thereupon, the trial court would conduct the trial wherein the fifth and the fourteenth plaintiffs have been examined as P.Ws.1 and 2 respectively for oral evidence, besides marking 4 documents for documentary evidence as Exs.A.1 to A.4. Ex.A.1 dated 27.10.1983 being the patta issued by the District Collector in favour of Ramasamy Chettiar, Ex.A.2 is the patta issued in favor of one Pachiyappan by the District Collector, Ex.A.3 being the photostat copy of the house site patta issued in favour of one Muthusamy and Ex.A.4 being the photostat copy of the patta issued in favour of one Appavu.

6. Likewise, on the part of the defendant, one Periyasamy would be examined as the sole witness as D.W.1 for oral evidence and three documents would be marked as Exs.B.1 to B.3, Ex.B.1 dated 25.7.1990 being the

adangal extract for fasli 1394, Ex.B.2 dated 28.1.1985 being the note order passed by the Sub Collector, Erode and Ex.B.3 dated 25 .7.1990 being the photostat copy of the sketch of Mukasi Hanumanpalli village.

7. In consideration of the above evidence placed on record, the trial court would ultimately dismiss the suit. Aggrieved, the plaintiffs have preferred an appeal in A.S.No.198 of 1990 before the Court of Principal District Judge, Erode, and the said Court, having traced the entire facts and circumstances of the case and having framed its own points for consideration, viz., (i) 'whether the respondent/ defendant is entitled to cancel the patta issued in favour of the ancestors of plaintiffs 1 to 14? (ii) Whether plaintiffs 1 to 14 are entitled to the suit property by means of adverse possession? and (iii) Whether plaintiffs 1 to 14 are entitled to the injunction sought for as against the defendant?' would allow the appeal thereby setting aside the judgment and decree of the trial court. It is only aggrieved against the reversing decision of the first appellate court, the defendant has come forward to prefer the above second appeal on certain grounds as brought forth in the grounds of second appeal and this Court has

admitted the same for determination of the following substantial question of law: "Whether the finding given by the first appellate court regarding prescription of title by the plaintiffs/respondents herein by adverse possession can be sustained in the absence of the necessary pleading and proof therefor?"

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that it is a suit filed by the respondents/plaintiffs for a bare injunction praying for the grant permanent injunction restraining the defendant and his men from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The trial court, having dealt with the facts pleaded by parties to the suit and having framed seven issues, as extracted supra, has ordered the trial, wherein on the part of the plaintiffs two witnesses have been examined as P.Ws.1 and 2 for oral evidence and four documents have been marked as Exs.A.1 to A.4 for documentary evidence. On the contrary, only one witness has been examined as D.W.1 for oral evidence and three documents have been examined as Exs.B.1 to B.3 for documentary evidence.

9. The trial court, having recorded the above mentioned evidence adduced by both sides and having appreciated the evidence in its own manner, has ultimately arrived at the conclusion to dismiss the suit and it is against this dismissal of the suit by the trial court, the plaintiffs have preferred an appeal before the Court of Principal District Judge, Erode, and the learned District Judge, having entertained the appeal and framing three points, viz., (i) 'whether the respondent/defendant is entitled to cancel the patta issued in favour of the ancestors of plaintiffs 1 to 14? (ii) Whether plaintiffs 1 to 14 are entitled to the suit property by means of adverse possession? and (iii) Whether plaintiffs 1 to 14 are entitled to the injunction sought for as against the defendant?' and having appreciated the facts and circumstances and the evidence placed on record before the trial court, has ultimately arrived at the conclusion to hold that the plaintiffs are entitled to the suit properties by means of adverse possession and that the defendant had no right to evict the plaintiffs from out of the suit properties and that since they are in possession and enjoyment of the suit properties for over the statutory period and having perfected the title by means of adverse possession, neither their patta could be cancelled by the defendant, nor could they be evicted from out of the suit property, thus granting the relief as prayed for in the suit and allowing the appeal in full as per its judgment and decree dated 25.1.1991. It is this judgment and decree as passed by the Court of Principal District Judge, Erode, which is testified before this Court in the above second appeal and the learned single Judge of this Court, while admitting the above second appeal, has framed the substantial question of law for determination of the second appeal, viz., 'Whether the finding given by the first appellate court regarding prescription of title by the plaintiffs/respondents herein by adverse possession can be sustained in the absence of the necessary pleading and proof therefor?'.

10. The learned counsel for the appellant, in his crisp argument, would submit that by framing points No.1 and 2 or in arriving at the

conclusion to hold that the respondents/plaintiffs are entitled to the suit properties having perfected title by means of adverse possession, the lower court has gone beyond the scope of the appeal, forgetting the fact that the suit had been filed only for a bare injunction to restrain the defendant from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties and for costs and no question of title much less by means of adverse possession arises regarding the pleading and prayer part of the suit filed by the respondents/plaintiffs or is it necessary on the part of the first appellate court to have dealt with the subject which is out of scope so far as the suit projected by the plaintiffs before the trial court and decided by the same is concerned. Therefore, the first appellate court has not only gone away from the scope of the appeal, but also in excess of its jurisdiction pertaining to the appeal, and since the first appellate court has been influenced by those aspects which are connected to points No.1 and 2 framed even though the relevant point for consideration is only the third point framed by it, and therefore, the decision arrived at by the first appellate court to allow the appeal for the point raised since being influenced by alien materials and points, the decision cannot be held to be a valid decision and would seek to dismiss the suit allowing the second appeal setting aside the judgment and decree passed by the first appellate court.

11. Learned counsel would lay emphasis that absolutely bereft of any pleading nor any issue framed nor evidence let in nor even dealt with by the trial court, the question of title and the plaintiffs perfecting title by means of adverse possession have been determined by the lower court in favour of the plaintiffs which is most undesirable and impermissible in law, and therefore, would ultimately pray this Court to allow the appeal in full setting aside the judgment and decree passed by the first appellate court.

12. On the other hand, the learned counsel appearing on behalf of the respondents/plaintiffs would submit that even there is no denying of the fact that the lower appellate court had unnecessarily gone into the question of title and the plaintiffs acquiring title by means of adverse possession, still, the long possession and enjoyment of the suit property by the plaintiffs has been found to be correct on evidence made available, thus meeting with the point of the suit and its prayer, and moreover, since on the part of the appellant, he has neither pleaded nor prayed for any title nor for declaration of title, the respondents/plaintiffs are not at all at fault and in their opinion, the granting of the decree in favour of the plaintiffs setting aside the judgment and decree passed by the trial court on merits by the first appellate court so far as it is concerned with the possession of the plaintiffs which has in no manner either became tainted or could be termed invalid, and therefore, would pray to confirm the judgment and decree passed by the first appellate court dismissing the above second appeal.

13. On a overall consideration of the facts and circumstances, the position of law on the subject, the pleadings and prayer of the suit, the judgment and decree passed by the trial court on issues framed and in consideration of the evidence placed on record and ultimately dismissing the suit and subsequently on appeal by the plaintiffs before the lower appellate court, the said Court having framed its points and in

appreciation of the evidence in its own manner and ultimately arriving at the conclusions to allow the appeal setting aside the judgment and decree of the trial court in decreeing the suit for permanent injunction and thereafter, the defendant, having preferred the above second appeal against the judgment and decree passed by the first appellate court and a learned single Judge of this Court having framed the substantial question of law as extracted supra, if a decision has to be arrived at by this Court, it has to be spelt out that the trial court, in observing all the legal necessities and in conducting a full trial on framing its own issues and having discussed the facts and circumstances of the case on evidence placed on record, has ultimately decided to dismiss the suit on the main ground that there had been non-compliance of the notice contemplated under Section 80(1) CPC. However, it has to be noted from the materials made available and from the judgment of the first appellate court that even though there was no compliance of the notice contemplated under Section 80(1) CPC, since it is a suit against the government, there is evidence for having filed an application in I.A.No.413 of 1985 under Section 80(2) CPC for dispensing with the issuance of notice under Section 80(1) CPC and the said interlocutory application having been contested by the other side, an order has been passed allowing the said application by the trial court, and therefore, on the part of the trial court, having itself acted in the manner mentioned in dispensing with Section 80(1) notice, it is actually surprising to this Court whether the same court could arrive at a different

conclusion holding to dismiss the suit for want of Section 80(1) notice, and therefore, the trial court does not seem to have arrived at a valid conclusion much less on merits and in accordance with law.

14. On the other hand, the first appellate court has also committed its own follies in not determining the appeal as it is warranted under law framing proper points and sticking to the subject in issue. Instead of adhering to the only question whether the plaintiff is entitled for permanent injunction as prayed for restraining the defendant from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property, the first appellate court has unnecessarily and without being warranted, has not only framed points on title and perfection of title by adverse possession on the part of the plaintiffs but also on assumptions and presumptions without any evidence being let in, has arrived at the erroneous conclusion to hold that the plaintiffs are entitled to the suit properties since they have perfected titled by means of adverse possession and further granting the relief sought for, for a bare injunction as prayed for in the plaint thus, on all these scores erroneously allowing the appeal preferred by the plaintiffs before it, setting aside the judgment and decree passed by the trial court in dismissing the suit.

15. In assessment of these aspects which have been discussed supra, both the trial court and the first appellate court have committed serious errors of law and in these circumstances, the only way left with for this Court is to set aside both the judgments and decrees passed by the trial court and the first appellate court as well and to remand the matter to the trial court for passing a judgment on merits and in accordance with law with

further opportunity for parties to be heard. Since it is a long pending matter, this Court is of the further view that a time limit has to be fixed for expediting the remaining procedures as mentioned supra and hence the following judgment.

In result, (i) the above second appeal stands allowed setting aside the the judgment and decree dated 25.1.1991 rendered in A.S.No.198 of 1990 by the Court of Principal District Judge, Erode, and the judgment and decree dated 31.1.1990 rendered in O.S.No.792 of 1985 by the Court of Additional District Munsif, Erode;

(ii) the above matter is remanded to the trial court i.e. to the Court of First Additional District Munsif, Erode, for being decided on merits and in accordance with law with further opportunity for the parties to be heard;

(iii) however, since it is a long pending matter, this Court is of the further view that the trial court shall expedite the remaining procedures as contemplated above and pass its judgment on merits and in accordance with law within a period of three months from the date of receipt of a copy of this judgment;

(iv) however, in the circumstances of the case, there shall be no order as to costs.

Index:Yes.

Internet:Yes.

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To

1. The Principal District Judge,
Erode.

2. The I Additional District Munsif,
Erode.

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